

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KARL CALHOUN,)	Case No. DISM-00-0039
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF THE BOARD
v.)	
)	
DEPARTMENT OF CORRECTIONS,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and LEANA D. LAMB, Member. The hearing was held at the Monroe Correctional Complex, Superintendent's Conference Room, Monroe, Washington, on February 21 and 22, 2001. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 Appearances. Appellant Karl Calhoun was present and was represented by Rick Engelhart, Business Agent for Teamsters Local Union 313. Lawrence W. Paulsen, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 Nature of Appeal. This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of agency or department of personnel rules or regulations. Respondent alleges that Appellant sexually harassed a coworker and engaged in various and escalated acts of inappropriate sexual and unwelcome behavior toward a coworker, which included offensive comments regarding her physical attributes, unsolicited, and unwanted

1 fondling of her upper and lower torso, refusing to let her egress unless she kissed him, exposing his
2 penis while in her presence and proposing marriage to her.

3
4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
5 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.
6 School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,
7 PAB No. D93-053 (1994); Schonauer v. DCR Entertainment, 79 Wn. App. 808 (1995), *review*
8 *denied*, 129 Wn. 2d 1014 (1996); Aquino v. University of Washington, PAB No. D93-163 (1995);
9 Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

10 11 12 **II. FINDINGS OF FACT**

13 2.1 Appellant Karl Calhoun was a Correctional Officer 2 and permanent employee for
14 Respondent Department of Corrections in the Monroe Correctional Complex. Appellant and
15 Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder,
16 Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on
17 June 7, 2000.

18
19 2.2 By letter dated May 10, 2000, L.W. Ryder Jr., Superintendent, informed Appellant of his
20 dismissal effective May 25, 2000. Mr. Ryder charged Appellant with neglect of duty, gross
21 misconduct and willful violation of published employing agency or department of personnel rules
22 or regulations. Mr. Ryder alleged that Appellant sexually harassed a coworker and engaged in
23 various and escalated acts of inappropriate sexual and unwelcome behavior toward a coworker,
24 which included offensive comments regarding her physical attributes, unsolicited, and unwanted
25 fondling of her upper and lower torso, refusing to let her egress unless she kissed him, exposing his
26 penis while in her presence and proposing marriage to her.

1
2 2.3 The Department of Corrections adheres to a policy which allows employees to work in an
3 environment free from unsolicited, unwelcome, and inappropriate sexual overtones. The
4 department has adopted and published policies which require employees to maintain high ethical
5 and professional standards at all times and which prohibit sexual harassment. DOC Policy 853.025
6 defines sexual harassment as behavior of a sexual nature which is unwelcome and personally
7 offensive to the recipient of the action. The policy further defines a hostile working environment as
8 a working situation in which the employee has not suffered any tangible economic loss as a result of
9 the alleged harassment but rather the employee has been subjected to a working environment that is
10 sexually offensive or intimidating to the employee. The DOC Employee Handbook requires that
11 fellow employees be treated with dignity and respect. Appellant was aware of the policies and
12 handbook and acknowledged his familiarity with them on January 9, 1995.

13
14 2.4 Appellant has a documented history of displaying inappropriate behavior toward female
15 coworkers. Appellant received a letter dated May 19, 1998, which reprimanded him for
16 inappropriately touching a female correctional officer. The letter alleged that Appellant 1) caressed
17 a female coworker's leg on two occasions while sitting next to her as they performed work, and 2)
18 that he brushed up against her while placing his hand on her hip then onto her buttocks while they
19 were conducting tier checks.

20
21 2.5 Appellant received a letter dated December 22, 1997, which reprimanded him for an
22 inappropriate comment he made which was perceived by a female correctional officer as being
23 sexual in nature. Along with the letter of reprimand, Appellant was provided with the institution's
24 Sexual Harassment Policy and was directed to familiarize himself with its contents.

1 2.6 The December 22, 1997 and May 19, 1998 letters of reprimand warned Appellant that the
2 institution would not tolerate sexual harassment in the workplace and directed Appellant to conduct
3 himself in a professional manner and to avoid any behavior which could be construed as sexually
4 harassing, offensive, intimidating or inappropriate. Appellant was warned that future misconduct
5 could result in further corrective or disciplinary action.

6
7 2.7 The allegations brought forward by Respondent date back to the Summer of 1995 when
8 Appellant and Correctional Officer Christy Knight began working together and the majority of the
9 allegations cannot be corroborated by first hand testimony. In determining the facts of this case we
10 have weighed the direct testimony of Appellant and of Ms. Knight. In addition, we heard testimony
11 from numerous witnesses who viewed Appellant and Ms. Knight's interactions at work.

12
13 2.8 Appellant denied that he engaged in the misconduct contained in the disciplinary letter and
14 he asserted that he and Ms. Knight had engaged in a three-year consensual, sexual relationship.
15 While there was conjecture by a number of employees that Appellant and Ms. Knight were engaged
16 in more than a workplace friendship, not one witness, other than Appellant, testified as to any
17 personal knowledge of a romantic or sexual relationship between the two. Furthermore, several
18 witnesses provided credible, independent evidence that Appellant made belittling and scornful
19 remarks to Ms. Knight in which he called her an "inmate lover" and compared her to an inmate who
20 was developmentally delayed and considered to be an extremely deviant sex offender.

21
22 2.9 We find, however, that Appellant and Ms. Knight worked together unobserved, and there
23 was ample opportunity for Appellant to engage in the type of behavior described by Ms. Knight.
24 Furthermore, Ms. Knight's retelling of the events has been consistent and forthright and her
25 reluctance to come forward sooner was understandable and reasonable under the facts presented to
26

1 us. Therefore, based on a preponderance of the credible testimony, we find that more likely than
2 not, the following events occurred.

3
4 2.10 Appellant and Ms. Knight shared a good working relationship as well as a workplace
5 friendship, and they were viewed by others as being a good work team. Appellant and Ms. Knight
6 engaged in workplace bantering and frequently took smoke and lunch breaks together. Ms.
7 Knight's coworkers describe her as a friendly, "touch-feely" person. While her interactions were
8 sometimes viewed as overly friendly, they were not necessarily considered flirtatious.

9
10 2.11 Ms. Knight considered Appellant to be a supportive and caring person. During
11 conversations at work, Ms. Knight and Appellant shared personal information about each other.
12 Ms. Knight confided to Appellant sensitive details of her life, including details of her marital
13 problems, her unstable home life, and concerns related to her son. Ms. Knight described her
14 husband as both a physically abusive and controlling man, who kept her on a strict time schedule.
15 Ms. Knight's husband drove her to, and picked her up from work. Appellant was aware that Ms.
16 Knight depended on her employment with the institution to financially support her husband, her
17 three children and three of her husband's children.

18
19 2.12 During the first year that Ms. Knight and Appellant worked together, Appellant would tell
20 Ms. Knight that she looked pretty and that she had a "nice butt." During cell searches, Appellant
21 would rub his groin against Ms. Knight's buttocks. Ms. Knight would tell Appellant to stop and
22 expressed her fear that she would lose her job. Ms. Knight normally "brushed off" Appellant's
23 behavior and proceeded with her work.

24
25 2.13 In June 26, 1996, Ms. Knight bid to another shift in an attempt to distance herself from
26 Appellant. On November 8, 1996, Appellant bid to the same shift and unit. Appellant and Ms.

1 Knight worked together three to four days a week. Appellant's inappropriate behavior toward Ms.
2 Knight intensified. On some occasions, Appellant followed Ms. Knight into rooms and would not
3 let her leave until she kissed him. If Ms. Knight refused to comply, Appellant would make
4 comments to Ms. Knight that she was sleeping with inmates and other references to inmates, such
5 as that inmates were her step kids.

6
7 2.14 On August 27, 1997, Ms. Knight again bid to another position in her attempt to avoid
8 Appellant's advances.

9
10 2.15 In February 1998, Appellant bid into the same unit where Ms. Knight was working. While
11 Appellant's inappropriate behavior toward Ms. Knight was initially less intense, it eventually
12 "picked up where it let off." Ms. Knight described an incident in which she walked back into the
13 unit control booth after Appellant relieved her for a break. Ms. Knight found Appellant with his
14 penis exposed and masturbating. When Ms. Knight told him to "stop it," Appellant responded, "I
15 know you want some of this." Appellant exposed his penis to Ms. Knight on three to four occasions
16 and that on other occasions, Appellant would enter the unit booth, crouch next to where she was
17 sitting and touch her crotch.

18
19 2.16 Sometime in mid-December 1998, while Ms. Knight was working the unit control booth,
20 Appellant entered, got down on one knee, showed her a ring, and asked her to marry him. Ms.
21 Knight told Appellant no. Appellant left and a short while later, he told Ms. Knight via the control
22 booth speaker phone that she should look at the ring one more time because maybe she would
23 change her mind. Ms. Knight again told him no.

24
25 2.17 Shortly thereafter, Ms. Knight contacted Ms. Miller, and asked her to come to the unit
26 control booth. Ms. Knight was on the verge of tears and appeared shaken as she told Ms. Miller

1 that Appellant proposed marriage to her. Ms. Knight and Ms. Miller contacted Sergeant Don Wood
2 and told him of Appellant's proposal. Sergeant Wood supervised both Appellant and Ms. Knight
3 from June 1998 through March 1999. Sergeant Wood asked if Ms. Knight wanted him to take any
4 action, however, Ms. Knight responded no and the matter was dropped.

5
6 2.18 In mid-December, Appellant approached Janet Miller, Classification Counselor and asked
7 her to encourage Ms. Knight to marry him. However, Ms. Miller declined to assist Appellant in his
8 endeavor to convince Ms. Knight to accept his marriage proposal.

9
10 2.19 In another attempt to create some distance between herself and Appellant, Ms. Knight put in
11 a bid to another unit, and on March 14, 1999, she was reassigned to E unit. Approximately one
12 week later, Appellant bid off B unit and was reassigned to the Education unit, which was in close
13 proximity to E unit. Appellant's position in the Education unit allowed him to leave the unit during
14 inmate counts and he was frequently seen in E unit visiting Ms. Knight. Appellant and Ms. Knight
15 continued to interact together by calling each other. However, Appellant continued to direct
16 derogatory remarks toward Ms. Knight. Correctional Officer Drake Nichols witnessed Appellant
17 refer to Ms. Knight as an "inmate lover" and "step child" of an inmate.

18
19 2.20 The events which precipitated Ms. Knight's disclosure of Appellant's alleged harassment
20 occurred in June 1999. Appellant called Diane Williams and asked that she deliver a note to Ms.
21 Knight. Ms. Williams did not know what the note contained. Ms. Williams gave the note to Ms.
22 Knight and told her that it was important that she call the individual listed on the note. Ms. Knight
23 was busy with work and she put the note in her pocket and forgot about it. However, Ms. Knight's
24 husband later found the note, which contained the name "Richard Meyer" and a phone number.
25 Ms. Knight's husband wanted to "get to the bottom of it" and he insisted Ms. Knight call the
26

1 number. When Ms. Knight called the number, she reached an answering recording for an apartment
2 complex, however, she did not succeed in reaching anyone to determine what the note concerned.

3
4 2.21 Ms. Knight subsequently approached Ms. Williams and asked her about the note. Ms.
5 Williams responded that Appellant had given it to her. When Ms. Knight learned that Appellant
6 sent her the message she became suspicious because Appellant liked to “pull jokes.” This led Ms.
7 Knight to check the Offender Based Tracking System, and she discovered that Richard Meyer was a
8 former inmate of the institution who had been recently released. The phone number on the note was
9 part of his contact information.

10
11 2.22 In response to Ms. Knight’s inquiry and concern, Ms. Williams subsequently approached
12 Appellant and questioned him about the note. However, Appellant denied to Ms. Williams that he
13 had ever given her a note.

14
15 2.23 Ms. Knight feared that by calling the number, she violated institutional policy which
16 prohibits correctional staff from having personal and unauthorized contact with inmates. Ms.
17 Knight became highly concerned that her job was placed in jeopardy.

18
19 2.24 Ms. Knight tolerated Appellant’s offensive behavior and sexual advances because he
20 provided her with emotional and moral support. Ms. Knight was also reluctant to come forward
21 because she feared being ostracized by correctional staff whom she believed would rally support on
22 Appellant’s behalf rather than believe her. Nonetheless, she finally reached the point where she’d
23 “had enough” and feared losing her job. Ms. Knight first shared her concerns with Ms. Williams.
24 At Ms. Williams’ urging, Ms. Knight finally reported the Meyers note incident to the institution’s
25 internal investigations officer. At the prodding of the institution’s investigator, she finally revealed
26 Appellant’s actions dating back to 1995.

1
2 2.25 On July 19, 1999, an Employee Conduct Report (ECR) was initiated against Appellant
3 based on Ms. Knight's allegations that he sexually harassed her. In response, Appellant denied the
4 charges and asserted that he was being harassed by both Ms. Knight and the institution's
5 administration. After the ECR was initiated, Appellant either met with or spoke to Associate
6 Superintendent Mike Williams on September 14, October 15 and 22, 1999. On each occasion,
7 Appellant continued to deny the charges and he asserted that he and Ms. Knight had a professional
8 relationship based on camaraderie. Appellant also stated that he did not have knowledge as to why
9 Ms. Knight would believe he had any feelings for her beyond friendship and professional respect.

10
11 2.26 After the conclusion of the investigation, Mr. Williams made a finding of misconduct based
12 on his belief that Ms. Knight was credible provided ample detail of the events. Mr. Williams was
13 not convinced by Appellant's denials because when asked about the motive for Ms. Knight to
14 fabricate the allegations, Appellant could provide no plausible explanation other than his belief it
15 was prompted by his marriage to another woman. Appellant was also unable to provide Mr.
16 Williams with any convincing reasons for why Ms. Miller, Ms. Williams and Mr. Woods would
17 fabricate their statements. On October 22, 1999, Mr. Williams concluded that Appellant committed
18 the alleged misconduct based on his conclusion that Ms. Knight was more credible than Appellant
19 and based on Appellant's prior letters of reprimand for similar allegations.

20
21 2.27 On January 7, 2000, Appellant and his attorney met with Superintendent Ryder to discuss
22 the findings of the ECR and Mr. Ryder's recommendation that Appellant be terminated. During the
23 meeting, Appellant alleged for the first time that he and Ms. Knight had engaged in a consensual
24 sexual relationship.

1 2.28 Appellant asserts that the investigation was unfair and biased and that the institution's
2 administration is racist. In support of his argument, Appellant cites an incident in which he
3 infringed an inmate and confiscated racist literature in the inmate's possession. Appellant testified
4 that the infraction was dismissed and the racist literature was subsequently returned to the inmate.
5 We find there was sufficient evidence to establish Respondent conducted a thorough and fair
6 investigation into allegations of Appellant's misconduct, and we find no evidence to suggest that
7 the investigation and the subsequent discipline imposed by Respondent was retaliatory or
8 discriminatory in nature. It became clear during the course of the hearing that Appellant was
9 considered a competent and valued correctional officer by both management and his peers.

10 11 **III. ARGUMENTS OF THE PARTIES**

12 3.1 Respondent argues that Ms. Knight's version of the events is credible and that she has been
13 consistent in restating her story. Respondent argues Ms. Knight was reluctant to come forward and
14 did not do so until after Appellant's harassment toward her became malicious when he sent her the
15 Meyers note. Respondent asserts that Ms. Knight's reluctance to come forward is easily understood
16 when considering her history of being dominated by men in abusive relationships, her accurate
17 perception that Appellant was well-liked and would be protected by his co-workers, her concern
18 that her husband would blame her for the situation, and her concern that her job would be
19 jeopardized.

20
21 Respondent asserts that Appellant is not credible and that no credible evidence exists to
22 support his contention that he and Ms. Knight were involved in a three-year consensual sexual
23 relationship. Respondent asserts that to believe Appellant's version of the events, one must believe
24 that not only Ms. Knight is lying, but that the many other witnesses are also lying. Respondent
25 argues that Appellant's actions were gross violations of DOC Policy and state and federal law
26 regarding workplace sexual harassment. Respondent argues that Appellant failed to learn his lesson

1 from two previous corrective actions where he received letters of reprimand for inappropriate
2 behavior of a sexual nature. Respondent argues that Appellant posed a serious threat to the right of
3 female DOC employees to work in an environment free of sexual harassment and grossly
4 inappropriate behavior. Respondent contends that Appellant's termination was more than justified
5 and requests that the Board affirm that decision.

6
7 3.2 Appellant asserts that he is innocent of all the charges, and he contends that he and Ms.
8 Knight were involved in a consensual, sexual relationship which began about 30 to 45 days after
9 they began working together and ended sometime in the summer of 1998. Appellant contends that
10 Ms. Knight fabricated the allegations after he informed her that he was marrying another woman.
11 Appellant argues that the Employee Conduct Report was issued only days after he married on July
12 17, 1999. Appellant contends he did not come forward with the nature of his relationship with Ms.
13 Knight during the investigation because 1) she was married and he did not want to disclose details
14 of their extramarital affair, and 2) because he was "never asked." Appellant denies that he asked
15 Ms. Knight to marry him or that he asked Ms. Miller to advocate to Ms. Knight on his behalf.
16 Appellant asserts that he could not recall calling Ms. Knight the step child of an inmate and denies
17 that he gave Ms. Williams the note containing the inmate name and number.

18 19 **IV. CONCLUSIONS OF LAW**

20 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
21 herein.

22
23 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
24 the charges upon which the action was initiated by proving by a preponderance of the credible
25 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
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1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
2 Corrections, PAB No. D82-084 (1983).

3
4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
6 of Social & Health Services, PAB No. D86-119 (1987).

7
8 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
9 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

10
11 4.5 Willful violation of published employing agency or institution or Personnel Resources Board
12 rules or regulations is established by facts showing the existence and publication of the rules or
13 regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules
14 or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

15
16 4.6 Conduct is unwelcome if the employee does not solicit or incite it, and regards it as
17 undesirable or offensive. Schonauer v. DCR Entertainment, 79 Wn. App. 808 (1995), *review*
18 *denied*, 129 Wn. 2d 1014 (1996).

19
20 4.7 There is little dispute here that Appellant's conduct was unwelcome by Ms. Knight and that
21 she found Appellant's conduct offensive. We were unconvinced by Appellant's assertion that he
22 was reluctant to reveal the nature of his relationship with Ms. Knight because she was married, and
23 therefore, did not want to reveal their extramarital affair. The nature of Ms. Knight's allegations
24 were both damaging to Appellant's reputation and career, and we are not convinced that
25 Appellant's delay of five months to come forward with the nature of their alleged relationship was
26 reasonable or believable. While the timing of the Employee Conduct Report occurred within days

1 after Appellant's marriage, the evidence supported that it was the Meyer's note incident which
2 prompted Ms. Knight to report Appellant's behavior, not his marriage to another woman.

3
4 4.8 Ms. Knight repeatedly rejected Appellant's advances and she tried to avoid him by bidding
5 into other units. Respondent has met its burden of proving that Appellant engaged in behavior of a
6 sexual nature which was unwelcome and personally offensive to Ms. Knight and affected Ms.
7 Knight's working conditions. Appellant's misconduct created an intimidating, hostile and offensive
8 work environment for Ms. Knight. Furthermore, Appellant's misconduct undermined the
9 department's policy against sexual harassment and interfered with the department's ability to ensure
10 that its employees were protected from any form of sexual harassment in the workplace.

11
12 4.9 Respondent has proven by a preponderance of the evidence that Appellant neglected his
13 duty to treat Ms. Knight with dignity and respect, that his misconduct rose to the level of gross
14 misconduct and constituted a willful violation of the department's sexual harassment policy.

15
16 4.10 Although it is not appropriate to initiate discipline based on prior formal and informal
17 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
18 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
19 D93-163 (1995).

20
21 4.11 In determining whether a sanction imposed is appropriate, consideration must be given to
22 the facts and circumstances, including the seriousness and circumstances of the offenses. The
23 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
24 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
25 program. An action does not necessarily fail if one cause is not sustained unless the entire action
26 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

1
2 4.12 In deciding whether the sanction of dismissal is warranted here, we note that Appellant has a
3 documented history of engaging in a pattern of sexually inappropriate behavior in the workplace.
4 Under the facts and circumstances of this case, including the seriousness of the offenses and the
5 repeated pattern of Appellant's misconduct, we conclude that Respondent has proven that the
6 sanction of dismissal is appropriate, and the appeal should be denied.

7
8 **V. ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Karl Calhoun is denied.

10
11 DATED this _____ day of _____, 2001.

12
13 WASHINGTON STATE PERSONNEL APPEALS BOARD

14
15 _____
Gerald L. Morgen, Vice Chair

16
17 _____
Leana D. Lamb, Member